IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5736 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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CHOLPADI JAGANNATH KAMATH - Petitioner(s)

Versus

P.S.V. MALLYA & 3 - Respondent(s)

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Appearance :
MR DIPAK C RAVAL for Petitioner(s) : 1,
MR PV NANAVATI for Respondent(s) : 1 - 3.
RULE UNSERVED for Respondent(s) : 3,
MR TARESH J BHATTJI for Respondent(s) : 4,
MR PJ MALKAN for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 23/02/2006

RAL JUDGMENT

1. The petitioner has filed this petition under Articles 226 and 227 of the Constitution of India praying for declaration that the order of removal of the petitioner from the service in question supposed to have been passed against him is null and void and of no effect. The petitioner has also prayed for the declaration that the Regulations 7(2), 7(3) and 19 of the Syndicate Bank Officer Employees (Discipline & Appeal) Regulations, 1976 are illegal and ultra vires Articles 14 and 16 of the Constitution of India.

2. It is the case of the petitioner that the petitioner was working with Syndicate Bank. The petitioner was issued a charge-sheet wherein it was alleged that the petitioner had committed a misconduct within the meaning of Regulation 3(1) of the Syndicate Bank Officer

Employees (Conduct) Regulations, 1976 by showing official favour to certain individuals/firms by permitting unsecured over-drawls, issuing bank guarantees without proper authority, discounting cheques under CODs without proper authority etc, while he was functioning as Manager of the Kanpur Branch of Syndicate Bank. It is also the case of the petitioner that at no stage the petitioner had secured any personal gains out of these transactions, or that this was a malpractice indulged in by the petitioner, or that there was any actual loss suffered by the Bank by such transactions. The integrity and/or the efficiency of the petitioner was not in dispute at any stage. The petitioner was holding his post as a Branch Manager of the Kanpur Branch during the period from 23.4.1979 upto 27.2.1985. He was also holding the post of Officer on Special Duty from 1.5.1985 to October 1985 and has been serving as Manager in

the Divisional Office of the Bank at Ahmedabad. When the petitioner was a Branch Manager of Kanpur Branch, he had sanctioned advances, loans, bank guarantees and other facilities to various customers of the bank which, in his best judgment, were in the interest of the Bank. During the course of such transactions, it was necessary and expedient to exceed the authority vested in the petitioner officially on paper by the Management of the Bank. It is also the case of the petitioner that this practice followed by the Branch Manager of the Banks, nationalized or otherwise, is in the interest of the Bank and is, therefore, accepted by Bank Managers as a normal course of business. It is also the case of the petitioner that the Management of the Bank including the petitioner's superiors were aware at all relevant points of time that this practice was being followed consistently and in a routine manner. All facilities granted by

the petitioner within or in excess of the stated authorized limits were reported to the Management in a number of ways. Routine statements are sent by all branches to the zonal office and the higher management. The Kanpur Branch being a metropolitan branch was also subjected to daily audit by the professional auditors appointed by the Bank and consisted of persons not employed by the Bank. The said branch was also subjected to inspection by the proper officers of the Bank at routine intervals. The routine correspondence was also sent by the petitioner Branch Manager to the Management drawing their attention to the various facilities granted by the petitioner in the normal course of business. The petitioner had, therefore, no reason to believe at any relevant point of time that this practice was going to be objected to by the Bank many years after the Bank had gained or enjoyed the benefits.

3. It is also the case of the petitioner that the petitioner has a good confidential report and there has not been any adverse remarks against him in the post. The petitioner has been given promotions fro time to time. He was given a special award for excellent all-round performance in the first year of his functioning as a Branch Manager. It is also the case of the petitioner that he has achieved record of taking the Kanpur Branch into the category of a Divisional Branch and he had also received letter of appreciation for achievement. Despite the aforesaid facts, the petitioner was served charge-sheet with regard to the alleged irregularities in the aforesaid transactions. The petitioner has filed the present petition mainly challenging the vires of regulation and further challenging the findings of the Inquiry Officer to the effect that the petitioner had committed misconduct

within the meaning of the Regulation 3(1). The petitioner has also challenged the legality and validity of the order of removal of the petitioner from the service on the ground that the report of the Inquiry Officer has not been furnished to him prior to effecting the punishment, and also challenged the legality and validity of the punishment on the ground that no show cause notice has been served on him with a view to enable him to make a representation in respect of the punishment imposed and the petitioner has also made it clear in the petition that he reserves his right to file a substantive petition, appeal etc, at appropriate time and this petition was not filed on merits. The petitioner has also raised the issue in the petition that the procedure for consulting the Central Vigilance Commission is violative of principle of natural justice and prejudicial to the charged employee. The Inquiry Officer, instead of

submitting his report to disciplinary authority sent it to Central Vigilance Commission for recommendation of the commission to the competent authority, who appeared to have taken into account such recommendation for taking final decision, without taking the confidence of charged employee. It is, therefore, contended that though the recommendation of the commission is not binding on the disciplinary authority, such recommendations may affect the competent authority taking final decision and the recommendations of the commission would be against the interest of the charged employee and, therefore, it is against the principle of natural justice. Since the documents are used against the petitioner without disclosing the same, the action of the respondent Bank against the petitioner is contrary to the law and violative of principle of natural justice and it is, therefore, required to be quashed and set aside.

4. The Court has issued rule and petition was admitted on 4.11.1987. The Court has granted ad interim stay only to the limited extent that any order passed in the inquiry will not be implemented. During the pendency of the petition the petitioner has filed Civil Application No.1955 of 1987 praying for mandatory direction to the respondents to permit the petitioner to resume duty and to entertain his application for leave on account of his mother's demise and alternatively the petitioner has prayed for the direction to the respondents to treat the petitioner as if in service and issue appropriate orders and/or directions permitting him to go to his native place to enable him to perform the last rites of his mother. This application was disposed of on 26.11.1987. While disposing of the said application it was observed that no ground was made out for the purpose of granting interim

relief prayed for by the petitioner. It was stated that the order has been served upon the petitioner by sending it by registered post acknowledgment. It was also stated that service by certificate of posting has also been made. Considering all these facts of the case, the Court did not find any material to grant the interim relief and hence the said prayer was refused.

5. On service of notice, the respondents have filed their appearance and filed affidavit in reply on 9.3.1988. Copy of the Inquiry Report and other documents were placed on record. The petitioner has filed his affidavit-in-rejoinder on 29.6.1992 and alongwith the affidavit in reply correspondence between the Bank as well as guide to disciplinary action and certain newspaper clippings were produced. On behalf of the respondent affidavit in sur rejoinder was filed on 28.7.2004 disputing the fresh

contention raised by the petitioner. The petitioner has, thereafter, filed affidavit in reply to sur rejoinder and alongwith the same correspondence exchanged between the Central Vigilance Commission as well as copy of judgment of Nagaraj Shivarao Karjagi vs. Syndicate Bank Head Office Manipal and another, is placed on record. On behalf of the respondent, reply to affidavit is filed dealing with several contentions raised by the petitioner in its affidavit in reply.

6. Mr.Dipak C. Raval, learned advocate appearing for the petitioner has raised several contention while challenging the order of removal. The main contention was raised that the charges which are levelled against the petitioner do not constitute any offence. He drew attention of the Court to the contents of the report of Inquiry Officer and charges enumerated therein do not disclose any mala

fide intention of the petitioner nor the interest of the Bank in any way was alleged to have been adversely affected. The petitioner has demonstrated in the petition on the basis of correspondence with regard to all that the transactions which have been entertained with 160 parties that they were within the knowledge of the authorities. The petitioner was not informed at any point of time about any of the objections about advances and loans. The petitioner has tried level best and brought many parties to settle their accounts. He has further submitted that no monetary loss was occurred. In support of his submission he relied on the decision of Hon'ble Supreme Court **in the case of Union of India and others vs. J.Ahmed, reported in AIR 1979 Supreme Court 1022**, wherein while explaining the concept of misconduct it is held that Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the

service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary, “misconduct means, misconduct arising from ill motive, acts of negligence, errors of judgment or innocent mistake, do not constitute such misconduct.” It is further observed therein that it is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable

or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence.

7. Mr.Raval has further relied on the decision of Hon'ble Supreme Court **in the case of Bhagwati Prasad Dubey vs. The Food Corporation if India, reported in AIR 1988 Supreme Court 434**, wherein the concerned workman was removed from the service on ground of misconduct, the conclusion by the Enquiry Officer that a charge of misconduct was proved against him. By interfering in the said finding, the Hon'ble Supreme Court has observed that the Officer under the pressure of necessity had sanctioned payment only at the rates at which another public undertaking, namely, the State

Warehousing Corporation had acquired the same goods. It was more so when there was nothing to show that the Officer had any special reasons for favouring the firm from which he purchased the goods. Since there was total absence of any motive, malafide intention, the Court has held that at worst the appellant can only be accused of an error of judgment and there would not be any misconduct.

8. Mr.Raval has, therefore, submitted that in the present case there is no allegation against the petitioner that he has committed an offence or he has derived any monetary benefits out of these transactions. Under the prevailing pretext of the Bank's financial position the petitioner had sanctioned advances and over-drawl, which cannot be termed as misconduct and hence the charges levelled against the petitioner about misconduct are unjustified.

9. Mr.Raval has raised second contention to the effect that the proceedings initiated and culminated against the petitioner were at the behest of the Central Vigilance Commission and order of removal was passed at the behest of the Central Vigilance Commission. For this purpose he has invited the attention of the Court to averments made in the memo of petition Regulation-19 of the Syndicate Bank Officer Employees (Discipline and Appeal) Regulations, 1976 deals with Central Vigilance Commission. It seems to be very innocent and it says only consultation to be done and the opinion of Central Vigilance Commission is sought for the purpose of vigilance angle only. He has submitted that the Bank has issued a Circular to Senior Officers containing guidelines for processing and reference of cases to the Vigilance Commissioner. It is stated inter alia therein that the finalization of a major penalty proceedings, including the conduct of

an inquiry, submission of the report by the Inquiry Officer and passing of the final orders by the Disciplinary Authority, should not ordinarily take more than 3 months from the date of issuance of charge-sheet. Another 3 months are available for completion of earlier departmental fact finding investigation, framing of charge-sheet etc, thus making a total period of 6 months, during which a disciplinary case for major penalty should be completed and finalized. No reference should be made in the final orders about CBJ report, CVC's/CVO's opinion and/or advise. On the basis of this he has submitted that while imposing penalty of removing the petitioner from service, Inquiry Officer and Disciplinary Authority mainly acted as per the guidelines of Central Vigilance Commission. He has made this submission and even drawn attention of the Court to the affidavit in reply and affidavit in rejoinder, wherein reference of letter

dated 27.7.1984 as well as 21.7.1984 were made. It is stated therein that the advise of the Central Vigilance Commission imposing of the penalty on the delinquent could not have been ignored by the disciplinary authority. The reliance was placed on the decision of Hon'ble Supreme Court **in the case of Nagaraj Shivarao Karjagi vs. Syndicate Bank Head Office, Manipal and another, reported in AIR 1991 Supreme Court 1507**, wherein the Court has observed that the punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the

appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. The Court has, therefore, held that the impugned directive of the Ministry of Finance is, therefore, wholly without jurisdiction and plainly contrary to the statutory Regulations governing disciplinary matters. The Court quashed and set aside the impugned orders of the disciplinary authority and appellate authority with a direction to the former to dispose of the petitioner's case in accordance with law and in the light of the observations made in the judgment.

10. Mr.Raval further submitted that in the present case Central Vigilance Commission has obviously dictated the disciplinary authority to enforce the penalty. For this purpose he has drawn attention of the Court to the correspondence exchanged between the Central

Vigilance Commission. The Director of Vigilance Commission vide letter dated 2.5.1987 has informed the Bank that the Commission would advise acceptance of the Inquiry Officer's report and imposition of major penalty of not less than removal from service of Shri Kamath i.e petitioner. The respondent thereafter made correspondence vide letter dated 11.7.1987 and informed the Commission that the Bank intended to monitor closely the progress made in the direction of recovery and, therefore, proposed penalty may be deferred for 4 to 6 months.

11. Though the ground with regard to non supply of the Inquiry Officer's report was raised in the petition, Mr.Raval has not pressed that issue in view of the law laid down by the Hon'ble Supreme Court and in view of the fact that the order of penalty was passed before 1990. As per law laid down by the Hon'ble Supreme Court mere non-supply of the Inquiry

Officer's Report to the delinquent officer would not vitiate the proceedings. Mr.Raval has further submitted that the recommendation is not binding to the disciplinary authority and they have to take independent view. For this purpose he relied on the decision of Hon'ble Supreme Court **in the case of State Bank of India vs. D.C.Aggarwal and another, reported in AIR 1993 Supreme Court 1197**, wherein it is held that the contention raised on behalf of the Bank that the correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation of the CVC which is considered sufficient'. It was further held that taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be

that the Disciplinary Authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. The Court further held that non-supply of the vigilance report was one of the grounds taken in appeal. But that was so because the respondent prior to service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. Recommendations of Vigilance prior to initiation of proceedings are different than the CVC recommendation which was the basis of the order passed by the Disciplinary Authority. The Court further observed that the action of the respondent that once the disciplinary

authority found that the action of the respondent did not cause any harm to the bank nor the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error.

12. Mr.Raval has further submitted that so far as inquiry proceedings, Inquiry Officer's report and order passed by the respondent authority is concerned, there is no vigilance angle and there was no fraud, misappropriation or allegation to the effect that the advances were given for personal gain or benefits. For this purpose he has invited attention of the Court to the affidavit in rejoinder wherein it is stated that the petitioner was charge-sheeted to the effect that he has caused loss to the Bank, but he was not charge-sheeted to the effect that he had indulged in malpractice. On the contrary it was specifically stated that the petitioner has not secured any personal

gain. In the affidavit in reply, for the first time it was stated that he indulged in malpractice and the acts proved against him have clearly brought out lack of integrity and dishonest motive on the part of the petitioner. Since there was no motive regarding malpractice there cannot be lack of integrity or dishonest motive. He has further submitted that it cannot be considered to be an act amounting to lack of integrity and/or dishonest motive. He has further submitted that there is no allegation that he had never sought approval of the transactions in question. Approval has been sought by him in time. Clarifications wherever necessary and wherever asked for were given. However, the competent authority had neither disapproved or approved the transactions in question and hence it cannot be said that there was malpractice. For this purpose he relied on the decision of this Court **in the case of B.J.Jadav vs. State of Gujarat,**

reported in 2005(3) GLR 2650, wherein it is held that the Government gravely erred in law in passing the impugned order of penalty against the petitioner without supplying a copy of the advise of GPSC and taking the same into consideration, and thereby, denying the petitioner the opportunity to meet with the issues raised therein. The Division Bench of this Court held that no valid order of punishment could have been passed on the person who has not been supplied with a copy of the advice of the UPSC.

13. Mr.Raval has further raised the contention that the penalty imposed is quite disproportionate to the charges levelled against the petitioner. He has submitted that the petitioner is having a good service record of 19 years and all through out his carrier not a single memo was issued to the petitioner and there was no finding to the effect that the

respondent Bank has suffered any financial loss. Looking to this uncontroverted facts the respondent authority should not have imposed the penalty of removal of service. In support of his submission he relied on the decision of Hon'ble Supreme Court **in the case of Ranjit Thakur vs. Union of India and others, reported in (1987) 4 Supreme Court Cases 611**, wherein it is held that judicial review, generally speaking, is not directed against a decision but is directed against the “decision making process”. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of

judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. The Court, therefore, held in that case that the punishment was no strikingly disproportionate as to call for and justify interference. The Court has quashed the impugned proceedings of the summary court martial and the consequent order of sentence and held that the appellant was entitled to reinstatement to the service.

14. He has also relied on the decision of this Court **in the case of Siddharth Mohanlal Sharma vs. South Gujarat University, reported in 1982 (1) GLR 233**, wherein it is held that the question of penalty, if it assumes disproportionate dimensions, may bear upon the reasonableness of the exercise of the

disciplinary power and, in the result, it may vitiate, at least, the ultimate decision on penalty. Having regard to the wide perspective and pervasiveness of Article-14, the penalty imposed in any such disciplinary proceeding cannot be so disproportionate to the misconduct proved that no reasonable person would have ever imposed in like circumstances. The arbitrary, unjust, and unfair exercise of penal powers would be manifest under such circumstances and such an action would not constitute a “right and just and fair” decision. If there is any statutory instrument prescribing minimum penalty for any specified misconduct, which is grossly disproportionate and which leaves no discretion with the disciplinary authority, such instrument and the action thereunder will both be exposed to the risk of a challenge under Article-14 in the absence of such an instrument, the order imposing disproportionate penalty will be laid

bare to a similar challenge.

15. Based on the aforesaid cases Mr.Raval inter alia submitted that looking to the charges levelled against the petitioner, penalty imposed against the petitioner is disproportionate and hence the order of removal of the petitioner from the service is required to be quashed and set aside.

16. Lastly, with regard to technical objection raised in the affidavit in reply by the respondent, Mr.Raval relied on the decision of Hon'ble Supreme Court **in the case of Sri Justice S.K.Ray vs. State of Orissa and others, reported in 2003 AIR SCW 402**, wherein the Hon'ble Supreme Court has held that a writ petition, which is filed under Article 226 of the Constitution, sets out the facts and the claims arising thereto. May be in given case, the reliefs set forth may not clearly set out

the reliefs arising out of the facts and circumstances of the case. However, the Courts always have the power to mould the reliefs and grant the same. He has, therefore, submitted that at the time when the petition was filed though the petitioner has limited prayer to file petition, but looking to the facts found during the pendency of the proceedings before this Court and in view of the further development resulted into the order of penalty passed by the disciplinary authority on the basis of the Central Vigilance Commission dictation, the relief prayed for quashing and setting aside the order of removal is required to be granted.

17.Mr.Vibhuti P. Nanavati, learned advocate appearing for the respondents on the other hand has strongly objected to the relief granted to the petitioner in the present petition. He has raised preliminary objection that alternative

efficacious remedy is not availed of by the petitioner. He has submitted that the petitioner has got adequate efficacious alternative remedy under Regulation 17 of the Syndicate Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 which provides for an appeal to the appellate authority within 45 days from the date of receipt of the order. He has submitted that the order dated 3.10.1987 is served upon the petitioner. He has further submitted that order of removal dated 3.10.1987 was addressed by the Personnel Manager - Shri Ramesh Kamath, Disciplinary Authority, by Registered Post letter dated 5.10.1987 with a covering letter dated 3.10.1987 with the instruction that the proceedings dated 3.10.1987 with enclosures be delivered to petitioner. It is also made very clear that in view of the nature of the penalty imposed upon the petitioner, he stood automatically removed from the services of the Bank as soon as the

proceedings under reference were served upon him. He further submitted that the instructions were issued to communicate the order relieving petitioner from the duties in view of the nature of the penalty imposed on him by the local delivery book. It is further submitted that the said documents were sent to the petitioner by the Disciplinary Authority by Registered Post on 5.10.1987. Pursuant to the instructions contained in the said letter, the respondent authority prepared an order relieving the petitioner from duties with effect from 9.10.1987 and enclosed with the said letter, the proceedings inclusive of order of removal and inquiry report. However, the petitioner did not accept the same and proceeded on medical leave. In order to complete the formalities of service of the order of removal on the petitioner, a letter dated 19.10.1987 was sent enclosing thereto the said judgment by Registered Post. He has

further submitted that the petitioner has conveniently ignored and suppressed the aforesaid facts with a view to obtain desired order from this Court. He has further submitted that the order of removal came into operation immediately on passing of the same and the effect of it was that it was not kept in abeyance till the order was served. In above view of the matter, even the order granting interim relief is of no consequence. He has further submitted that the petitioner has made averments that he reserved his right to file a substantive petition, appeal etc, at appropriate time and this petition was not filed on merits. He has, therefore, submitted that no other point can be canvassed in the present petition, as after the Inquiry Officer's report was submitted and disciplinary authority has also passed an order. Since the petitioner has neither filed any petition nor any appeal challenging the order of the

disciplinary authority, it is not open for the petitioner to raise all these issues in the present petition. Mr.Nanavati has further invited the attention of the Court to the decision of the Hon'ble Supreme Court **in the case 1980 Sunil Kumar Banerjee vs. State of West Bengal and others, reported in (1980) 3 Supreme Court Cases 304**, wherein the Hon'ble Supreme Court held that the disciplinary authority committed any serious or material irregularity in consulting the Vigilance Commissioner, even assuming that it was so done. The conclusion of the disciplinary authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently, on the basis of the charges, the relevant material placed before the Enquiry Officer in support of the charges, and the defence of the delinquent officer. In fact the final conclusion of the disciplinary authority on the several charges are so much at variance

with the opinion of the Vigilance Commissioner that it is impossible to say that the disciplinary authority's mind was in any manner influenced by the advice tendered by the Vigilance Commissioner. The Court further observed that if the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the Vigilance Commissioner and obtained his views on the very same material. Mr.Nanavati has submitted that this decision has been rendered by the three Judges Bench of Hon'ble Supreme Court and hence the decision of Hon'ble Supreme Court **in the case of Nagaraj Shivarao Karjagi AIR 1991 Supreme Court cases, (Supra)** which is rendered by the two Judges Bench of Hon'ble Supreme Court should not be binding to this Court. He has, therefore, submitted that simply because the

recommendation of the Central Vigilance Commission and incidentally the decision taken by the disciplinary authority are same, it cannot be said that the order was passed by the disciplinary authority as per the dictation of the Central Vigilance Commission. For this purpose, he has submitted that the disciplinary authority was not bound and has not actually considered itself bound by the advice given by the Central Vigilance Commission keeping in view the gravity and seriousness of the misconduct proved in the inquiry. He has further submitted that the disciplinary authority has come to the conclusion that the order of removal of the petitioner from the service is the only punishment to commensurate with the gravity of the misconduct committed by the petitioner and, therefore, the disciplinary authority has passed the said order. He has further submitted that when the petitioner has not preferred any appeal to the appellate

authority bringing a fresh ground for the interference with respect to the penalty imposed by the disciplinary authority and to modify the same, the petitioner is estopped from contending that Reg.17 is not an efficacious remedy.

18. The petitioner's contention that the penalty imposed is disproportionate to the charges levelled against him, Mr.Nanavati submitted that it is difficult to believe that the petitioner having absolutely clear and unblemish service record. While working as the Branch Manager of Kanpur Branch during the period from April 23, 1979 to February 27, 1985, the petitioner has sanctioned and released huge amount of bank's money by way of loans, advances, unduly accommodating the parties. He has further submitted that as the bank found that the recovery of such huge amount would be highly risky and another

officer may not be able to recover the same, the petitioner was posted back to Kanpur Branch as Recovery Officer in April 1987, exclusively to recover the loans and advances sanctioned by him while working as the Branch Manager of the said Branch during the period April 23, 1979 and February 27, 1985. He has further submitted that the petitioner cannot take defence under the guise of day-to-day audit of the branch. The modus operandi adopted by the petitioner also requires to be examined. Excellent performance as claimed by the petitioner cannot entail him the right to commit the misconduct of extending undue financial accommodation at the cost of the bank revealing lack of integrity and honesty. He has further submitted that the past record cannot outweigh the misconduct committed by the petitioner.

19.Mr.Nanavati has further invited the Court's

attention to the Inquiry Officer's Report, based on which the disciplinary authority passed the impugned order of removal of the petitioner from the service. Considering the facts of the case and evidence on record Mr.Nanavati submitted that on assessment of evidence from Inquiry Officer's Report it is found that the petitioner allowed various credit facilities to 38 parties in a routine manner in excess of authority or without proper authority. In doing so, the petitioner did not follow the Bank's circulars in particular Ex.21, 106 and 167. The Inquiry Officer's assessment in respect of facilities allowed to each of these parties has been given while discussing about the individual party. It would be seen from those observations that the petitioner has no defence. All the irregularities which have been brought out by the prosecution are proved. It would be seen that either the petitioner did not have any

defence at all or whatever defence was put forward was unsubstantiated. He has further submitted that the petitioner himself admitted the irregularities but has put forward certain arguments. The argument that the Regional Manager kept pending the credit needs of parties and, therefore, transactions were permitted by the branch was not correct. The real fact that on a number of occasions when the Regional Manager had asked for certain details, the petitioner allowed the parties to operate the accounts and allowed them credit facilities. Statement of the petitioner that he was not properly guided appears to be strange and the Inquiry Officer's assessment of facilities to each party would show that on some occasions he was waiting for approval from the Regional Office, proceeded to grant facilities to the party. When the Bank had issued circular, the petitioner should have followed it. He should have followed circular

at Ex.106 relating to credit restraint measures. While granting vehicle loans, he did not follow OGC guidelines. It is clear that the petitioner allowed debit balance to these parties with or without authority or allowed them to overdraw in excess of the limits sanctioned by Regional Office. He has also committed irregularities in furnishing bank guarantees to Associate Journals and to Milkman Baking Industries. These irregularities are of very serious nature. In the case of Superior Fabrics overdraw was allowed under expired credit limits without proper authority. It has been brought out by the petitioner that when the earlier debit balances were overdue further accommodation was allowed without recovering earlier balances as per rules. Even some of the accounts were opened without obtaining a/c opening form. He has, therefore, exceeded his authority on a number of occasions in either allowing debit balances or allowing debit

balances in excess of limit fixed by the Regional Office. In view of all these charges the Inquiry Officer's Report is just and proper. He has, therefore, come to the conclusion that the petitioner committed irregularities as mentioned in articles of charge and came to the further conclusion that the charges levelled against the petitioner were established.

20. Mr.Nanavati has further submitted that the order of removal of the petitioner from the service was passed after having gone through the case and entire background the disciplinary authority found from the proceedings before the Inquiry Officer that various reasonable opportunities to defend his case were given and that the findings of the Inquiry Officer were arrived at as mentioned in paras (a) to (g) of the articles of charge and as per details, the imputation of misconduct have been

established that the petitioner showed undue official favour to 38 parties by committing various irregularities and thereby caused to be made available undue financial accommodation to the various parties in detriment to Bank's interest and lack of integrity, honesty, devotion to duty and diligence and exhibited conduct unbecoming of the status of Bank Officer. He has thus contravened Regulation 3(1) of Syndicate Bank Officer Employees' (Conduct) Regulation, 1976.

21.From the above facts, Mr.Nanavati submitted that the disciplinary authority has arrived at a conclusion not merely on the basis of the report of Central Vigilance Commission but he has considered all the aspects and hence no fault can be found with the said report or with the removal order and, therefore, the Court should not interfere in such cases.

22. He has further submitted that once the penalty is imposed by the disciplinary authority and an appeal is provided against the said order and that remedy is not availed of, this Court should not interfere in the penalty imposed, while exercising powers under Articles 226 and 227 of the Constitution of India. For this purpose he relied on the decision of Hon'ble Supreme Court **in the case of Divisional Manager, Plantation Division, Andaman & Nicobar Islands, reported in (2005)2 Supreme Court Cases 237**, wherein it is held that when in terms of the rules governing the conditions of service of the workmen, a departmental appeal was maintainable against an order of the disciplinary authority, presumably, such a remedy was provided with a view to enable the workmen to prefer an effective departmental appeal and only in that view of the matter, a copy of the enquiry report was supplied by the appellant along with the order of the

dismissal. The workmen evidently did not avail the benefit of filing any departmental appeal. In such an appeal they could have shown as to how and in what manner and to what extent they were prejudiced by non-supply of a copy of the enquiry report. Had the workmen filed such an appeal, they could have furthermore demonstrated before the Appellate Authority that in terms of the rules and regulations governing their conditions of service they were, as a matter of right, entitled to a copy of the enquiry report before an order of punishment was imposed upon them. The Court further observed that the principles of natural justice cannot be put in a straitjacket formula. It must be viewed with flexibility. In a given case, where a deviation takes place as regards compliance with the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before. The employee must show

sufferance of prejudice by non-obtaining a copy of the enquiry report. A Court will refrain from interfering with an order, having regard to 'useless formality theory', in a given case.

23. Mr.Nanavati has further relied on the decision of Hon'ble Supreme Court **in the case of State Bank of India and others vs. Samarendra Kishore Endow and another, reported in (1994) 2 Supreme Court Cases 537,** wherein Hon'ble Supreme Court observed that the main charge against the respondent is putting forward a false claim for reimbursement of expenditure incurred for transporting his belongings from Phek to Amarpur. So far as charge 5 is concerned there is no finding that the account become irregular or that any loss was incurred by the bank on account of the irregularity committed by the respondent. The Court further observed that the punishment of removal imposed upon the respondent is harsh

but this is a matter which the Disciplinary Authority or the Appellate Authority should consider and not the High Court or the Administrative Tribunal. The Court, therefore, held that the proper course to be adopted in such situations would be to send the matter either to the Disciplinary Authority or the Appellate Authority to impose appropriate punishment.

24. Mr.Nanavati further relied on the decision of this Court **in the case of Vinodchandra Balkrishna Pandit vs. Bank of India & ors, reported in (1998) 39(1) GLR 824**, wherein this Court has held that the Court will not enter into the realm of appreciation of the evidence. The standard of proof in the departmental inquiry differs from the standard of proof in a criminal trial. Sufficiency of evidence is also not the area where this Court can go into. The finding of the Inquiry Officer has to be

accepted unless the petitioner has made out the case that the finding is based on no evidence. In the case before the Court, after going through the statements of witnesses read by the Counsel for the petitioner, it cannot be said that it is a case of no evidence. On testing the statements of witnesses recorded in this case, on the standard of proof of preponderance of prohibition, the Court does not find any wrong in the findings of the Inquiry Officer. While referring the judgment of Hon'ble Supreme Court **in the case of Government of Tamil Nadu vs. A. Rajapandian, AIR 1995 SC 261,** wherein the Court observed that this Court has no jurisdiction to sit over the findings of the Inquiry Officer as Appellate Authority. It is for the satisfaction of the Inquiry Officer and Disciplinary Authority to decide on the basis of evidence whether the charges framed against the delinquent are proved or not. In the matter of disciplinary inquiry this Court can

examine the procedural correctness of the decision making process and will not examine the matter as an Appellate Authority. Each case has to be decided on the basis of its own facts and in that case, much indulgence has been granted by this Court though that may not be available to the petitioner while exercising powers conferred to this Court under Article 226 of the Constitution of India. The Court, therefore, held that in view of the facts of this case and the law on this point, it is not the case where the findings of the Inquiry Officer are perverse or are based on no evidence. With regard to quantum of punishment the Court observed in that case that the Court has no power to substitute its own discretion in the matter for that of Disciplinary Authority, nor this Court has jurisdiction to impose any punishment to meet the ends of justice but what appropriate punishment should be for the delinquent employee / officer for

proved misconduct is within the discretion and judgment of the Disciplinary Authority. However, the Appellate Authority may interfere with the same but not this Curt under Article 226 of the Constitution of India. The Court has also made reference in the case of B.C.Chaturvedi vs. Union of India, (1995 (6) SCC 749) wherein the Hon'ble Supreme Court held that the High Court while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and imposed some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court, it would appropriately mould the relief, either directing the disciplinary / Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in an exceptional and rare case, impose appropriate punishment, with cogent reasons in support thereof.

25. After having heard the learned advocates for the respective parties and after having gone through their respective pleadings as contained in the memo of petition, affidavit-in-reply, affidavit-in-rejoinder, sur-rejoinder, further replies and after having gone through the Inquiry Officer's Report, disciplinary authority's order of removal which is under challenge and the documents which have been produced before the Court and after having examined authorities cited before the Court from both the sides, certain undisputed facts which are emerging are that the petitioner has sanctioned several loans and advances without following rules and regulations prescribed by the Bank and he has exceeded his limit. The departmental proceedings were initiated against the petitioner. Charge-sheet was given levelling as many as 38 charges. Explanations were invited from the petitioner which have not

been satisfactorily rendered and after considering the said explanations, the Inquiry Officer has submitted his report. There is a dispute with regard to non supply of the Inquiry Officer's report. However, in view of the settled legal position Mr.Raval has not pressed this point. On the basis of the Inquiry Officer's report, show cause notice was issued to which reply was given and was considered. Based on this and on the basis of consultation with the Central Vigilance Commission, the disciplinary authority has passed the order of removal of the petitioner from service on the ground that the charges levelled against the petitioner were proved and the disciplinary authority has found himself in agreement with the report of the Inquiry Officer.

26.The main dispute raised by the petitioner in this petition is that the order of removal was

passed, when he went on leave and petition was filed before the Court on the basis that no order of removal was served on the petitioner. It is also brought on record that the petitioner has made an attempt earlier for interim relief and for that purpose Civil Application was filed, however, that has not been entertained by this Court and interim relief was not granted. During the course of proceedings, the Inquiry Officer's Report and the order of removal have come on record. It was vehemently argued before the Court that the order of removal is entirely based on the recommendations of the Central Vigilance Commission and at the behest of Central Vigilance Commission such order was passed. In support of this submission, correspondence as well as the relevant record was produced, referred to and relied upon. Reliance was placed on the decision of the Hon'ble Supreme Court as indicated above wherein it is clearly

held that the disciplinary authority has passed its order merely at the behest or dictation of Central Vigilance Commission. It is also contended vigorously that since this recommendations, reports etc, were not brought to the notice of the petitioner, it was violative of principles of natural justice and order is required to be quashed and set aside. It has also been contended vigorously that the charges levelled against the petitioner are not serious and it will not fall within the ambit of misconduct so as to invite the harsh penalty of removal from the service. Based on these submissions made before this Court, it was urged that the order of removal is required to be quashed and set aside. Since the petitioner has attained the age of superannuation, there is no question of reinstatement. However, the monetary benefits to which the petitioner would have been entitled, had he been in service, the same should be granted to the petitioner.

27.As against the aforesaid pleadings made before the Court on behalf of the petitioner, the case of the respondent was that the charges are of very serious nature and penalty imposed on the petitioner is just and proper and it cannot be interfered with while exercising power under Articles 226 and 277 of the Constitution of India. It is also found from the record that the petitioner has not availed of any alternative remedy by preferring any appeal. It is, therefore, not open for the petitioner to raise all these issues before the Court and that too after reserving the right to file substantive appeal or petition at the later point of time. Before the Court examined this submission, the Court is of the view that it is true that the order passed by the disciplinary authority is based on the recommendations made by the Central Vigilance Commission and to that extent reliance placed on the decision of

Hon'ble Supreme Court in the case of Nagaraj Shivarao Karjagi (Supra) certainly renders some assistance to the petitioner. The only question which is to be examined is as to whether the correspondence which has been produced before the Court would reveal that at the dictation of the Central Vigilance Commission order of removal was passed or after considering the recommendations, charges levelled against the petitioner and the other relevant aspects, the order was passed by the disciplinary authority. From the various details and particulars it is found that 34 charges were levelled against the petitioner. The Inquiry Officer has considered evidence and explanations minutely and thereafter has given his report. The disciplinary authority has gone through this report and made consultation with Central Vigilance Commission. The recommendations were not blindly accepted nor the same were implemented forthwith. Though

certain correspondence produced before the Court was confidential and was of 1987 it was produced before the Court by the petitioner at the belated stage i.e, in 2005 alongwith the affidavit-in-rejoinder. The source of document has not been disclosed by the petitioner, nor the same was denied by the disciplinary authority. However, the contents of the correspondence were interpreted by both the parties in their own way. Streneous efforts were made on behalf of the respondents that the recommendations of Central Vigilance Commission have not been accepted nor the same were binding on the disciplinary authority and as such the same were not accepted in their entirety. Even in the correspondence, it is revealed that initially the Central Vigilance Commission has recommended to remove the petitioner from the service forthwith but the same has not been accepted by the disciplinary authority and in reply, it was stated that

recovery was yet to be enforced. Even after the second communication, order was not passed immediately by the disciplinary authority at the behest of the Central Vigilance Commission. As per the statutory provision and rules and regulations, it is only in consultation with the Central Vigilance Commission and not at their dictation the disciplinary authority has passed the order. The Court, therefore, is not inclined to accept the submission of the petitioner that the order is entirely based on the dictation or recommendations of the Central Vigilance Commission. Incidentally it has happened that the disciplinary authority's order and the recommendation of the Central Vigilance Commission are one and the same, but this fact by itself would not lead to the conclusion that the said order was passed at the behest of the Central Vigilance Commission.

28. It is true that the recommendations of the Central Vigilance Commission have not been given and the petitioner has not got an opportunity to meet with the said recommendations. However, the Hon'ble Supreme Court in the case of Sunil Kumar Banerjee, 1980(3)Supreme Court Cases (Supra) held that it is not mandatory requirement to supply copy of the recommendations of the Central Vigilance Commission and attempt was made to distinguish the said judgment. Even otherwise, it has not been established before the Court as to whether any loss was suffered by the petitioner by non supply of the recommendations of the Central Vigilance Commission. The order, cannot therefore, be set aside merely on the ground that the said recommendations were not made available to the petitioner before passing of the impugned order of removal from the service. With regard to quantum of penalty, whether it is disproportionate to the charges levelled

against the petitioner, the Court is of the view that there is no dispute about the fact that the petitioner has exceeded his limits and sanctioned loans in favour of certain parties. It is true that it has not come on record that by virtue of this, the Bank has suffered losses. It was merely alleged against the petitioner. However, looking to the petitioner's past record, the punishment imposed on him is too harsh. If the petitioner would not have attained the age of superannuation, the Court would have passed the order of reinstatement and the petitioner would have been benefited. However, looking to the peculiar facts and circumstances of the present case, and considering that the the petitioner has already retired, some indulgence of this Court is required to be shown. The petitioner has worked as the Branch Manager. Looking to the present trend and various judicial pronouncements on the subject, the Court is not

inclined to pass any order of back wages. However, the petitioner should be given benefit accrued to him from his past service of 19 years. The Court, therefore, passes the order of reinstatement with continuity of service without back wages. Therefore, the order of removal is hereby quashed and set aside and the petitioner is held to be entitled for retirement benefits and other monetary benefits.

29.Subject to the aforesaid directions and observations the petition is accordingly disposed off in the above manner. Rule is made absolute to the above extent without any order as to costs.

(K. A. PUJ, J.)

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